
THE STUDY OF THE RIGHT TO PRIVACY IN THE DIGITAL AGE IN THE INDIAN CONTEXT

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Abstract:

The amended Bill on Personal Data Protection is now being called the 'Digital Personal Data Protection Bill, 2022'. Its implementation is expected to bring huge relief to the industry, especially tech firms. The new bill proposes a steep increase in the number of fines and eases cross-border data exchange. The decision to limit the scope of data protection to personal data protection and exclude non-personal data is a positive step. The broad objective of the bill as drafted is to use digital personal data in such a way that the rights of individuals to personal data are also protected and the data can be used for legitimate legal purposes. The proposed bill outlines the rights and duties of citizens, also referred to as "digital citizens". When we talk about the data economy, there will be a huge impact of this new proposed bill. In this research paper, the right to privacy in the digital age in the Indian context has been studied.

Keywords: Data Security, Digital Personal Data Protection Bill, Rights to Personal Data, Data Economy, Internet, and Technology

Introduction:

India currently has over 76 crore active internet users or in other words 'digital citizens'. This number is expected to reach 120 crores in India in the next few years. It is being speculated that India will be the largest consumer and producer of data per capita in the world. It has also become clear over the years that the Internet and technology are increasingly reaching places where the interests of users can easily be compromised. Therefore it is extremely necessary to have data privacy rules and laws in place. This can prevent misuse of personal data of citizens. Legislation for the Internet needs to consider the basic principles and expectations of citizens with adequate openness, security, trust, and accountability.

Data remains at the heart of a rapidly growing digital economy and eco-system of digital products, services, and intermediation. Keeping this utility in mind, strict digital regulations and data privacy laws need to be made necessary to ensure individual rights, public interest, and ease of doing business, as privacy is a fundamental right as declared by the Supreme Court. So now we can expect that earlier people whose personal and sensitive information used to be leaked and used in a wrong way, will now stop with the coming of the new law.

It is a privilege to see history being made, and even then history is not made every day, but the decision of the nine-judge constitution bench of the Supreme Court in the matter of privacy is such a historic event in independent India, which will strengthen democracy in the coming decades. Will continue to do the work of strengthening The Court has said that the right to privacy is a fundamental right, which is protected under Article 21. In fact, during the hearing



of this matter, Attorney General KK Venugopal had said that privacy is an elite concept, that is, privacy is a matter of eating and drinking at home and the idea of privacy does not match the needs of the majority society. But the watchdog of the Constitution, the Supreme Court, says that it is not correct to say that 'needy people just want economic progress, not civil and political rights'.

Try to understand the implication of this decision of the country's biggest court, then you should read this decision again and again. We will not be able to recognize the historical importance of this decision until we are unaware of the importance of privacy itself.

Research Methodology:

The research paper has depended on secondary data.

Objective of Research:

- To study the right to privacy in the digital age in the Indian context.
- To study the importance of privacy in the digital age.

The Right to Privacy in the Digital Age in the Indian Context:

The Supreme Court, in its landmark judgment, upholding the right to privacy as a fundamental right, has linked it to the right to life and personal liberty guaranteed in Article 21 of the Constitution, considering it a constitutional right to human dignity. According to the Supreme Court, privacy preserves an individual's freedom and ability to control key aspects of life. 'Right to privacy is also an absolute right like other fundamental rights given in Article 21.' The Supreme Court has said that in the current digital era, the government must ensure that the personal information of the people is not interfered with by the forces outside the country and the country, nor does any person face any threat. 'We expect the central government to examine any such potential threat and make a comprehensive system for the protection of information.'

Any such arrangement must be carefully and sensitively balanced between the interests of the individual and the legitimate concerns of the country. 'Reasonable concern of the country may include points such as national security, prevention or investigation of any crime, promotion of innovation or dissemination of knowledge or denial of benefits of social welfare schemes.' The constant technological change has created as many concerns today as it did not seven decades ago. In such a situation, it is necessary to connect the youth and adolescent-age citizens of the country with the present so that misunderstanding does not arise in them. That is why there should be so much flexibility while defining the Constitution so that its basic and essential points remain in the mind of future generations.

In the context of Article-21, encroachment on someone's privacy can be legally justified only when the process related to it is equal, fair, and reasonable. 'Any law encroaching on life and personal liberty under Article-21 should be valid according to the constitution.' Life is precious but it can be lived only when every person has the freedom to live life according to his choice. The right to decide the best way to live life for someone should be left to that person.



In all such cases, the responsibility of the government should be focused on preserving the individual's capacity to take decisions, preserving the liberty of the individual, and not exerting any kind of coercion.

Importance of Privacy:

Privacy is a right that is necessary to protect the autonomy and dignity of an individual. It is the foundation stone of many other important rights. The right to privacy is like a cover for us, which protects us from unnecessary and inappropriate interference in our lives. It informs us about our socio-economic and political status and to what extent we want to separate ourselves from the world. We have the freedom to choose who has control over our bodies thanks to privacy.

In modern society, the importance of privacy increases even more. After the French Revolution, autocratic monarchy began to leave the world, and democracy based on the universal principles of equality, humanity, and modernity began to spread. Now when the state started running welfare schemes for the people, then this question became relevant why the dignity with which we got the pleasure of living through democracy is being snatched away by the violation of privacy? There has always been a conflict between technology and rights and in the 21st century, technological development has reached its highest level. In such a situation, privacy had to face the double whammy of state policies and technological upgradation. Today we all use smartphones. Whether it is Apple's iOS or Google's Android or any other operating system, when we download any app, it asks for permission to use our phone's contacts, gallery, and storage, etc. and only then that app is downloaded. May go. In such a situation, there is a danger that if any unauthorized person breaks into the database of that app, then the privacy of the users may be in danger. Intrusion into privacy through technology is less serious than interference by the state. We are saying this because the use of technology is dependent on our will, but the state often does not care about the will of the people in violation of privacy.

The case of Aadhaar is a living example of this. When the implementation of the Aadhaar was started for the first time, it was said that it was brought to give a unique identification number to all Indians. Soon Aadhaar was made mandatory for benefit transfer in many big schemes including MNREGA. Even avoiding any kind of discussion on the basis, it was passed in the Parliament as Money Bill. All this shows that privacy, which is essential for the survival of democracy, is under serious threat.

In the year 1954, in the MP Sharma case, a bench of 8 judges, and in the year 1962, in the Kharak Singh case, a 6-judge bench did not consider privacy as a fundamental right. Therefore, when the Supreme Court started hearing in this regard last year, a bench of nine judges of the court was constituted. A PIL was first filed in the Supreme Court of India in the year 2013 challenging the constitutional validity of Aadhaar. A three-judge bench headed by Justice Chelameswar on 11 August 2015 decided that Aadhaar should be used only for Public Distribution System (PDS) and LPG connections. A few days later, a division bench headed by the then Chief Justice HL Dattu allowed the use of Aadhaar in several other schemes, including MGNREGA. Thereafter, another petition was filed in the Apex Court to whether there was a violation of the principle of privacy in the Aadhaar case and whether privacy is a



fundamental right.

The right to privacy is not mentioned in Part 3 of the Constitution which recognizes certain rights as 'fundamental'. Taking cognizance of all these things, the constitutional bench of nine judges started hearing the case and started considering the following points.

- What is the scope of the right to privacy?
- Is the right to privacy a right protected by common law or a fundamental right?
- How will the category of privacy be decided?
- What are the restrictions on privacy?
- Right to privacy, right to equality, or freedom of expression?

Court's decision:

The apex court has said in its judgment that the right to life, the right to privacy, and the right to liberty should not be viewed separately but. In the words of the Court, "Privacy is an integral part of the dignified existence of a human being and, indeed, it is not mentioned in the Constitution, but the right to privacy is a right which is not created in the Constitution but recognized. The right to privacy is protected by the Constitution because it is a byproduct of the right to life and the right to personal liberty. The right to privacy, in association with other fundamental rights to live with liberty and dignity, will strengthen democracy. Determining the categories of privacy, the Court said that the right to privacy includes things like respect for individual inclination and choice, the sanctity of family life, the decision to marry, the decision to have children, etc.

One's right to be alone would also come under his privacy. The right to privacy protects a person's autonomy and the freedom to decide all important aspects of life in their way. The court has also said that if a person is in a public place, it does not mean that he cannot claim privacy. Like other fundamental rights, the system of reasonable restrictions will continue to apply to the right to privacy, but any law that violates privacy should be reasonable and reasonable. The court has also said that privacy is not threatened only by the government, but it can also be violated by non-governmental actors. Therefore, the government should make adequate efforts for data protection. The Court has made a subtle observation that 'gathering information about a person is the first step in the process of controlling him'. Such information can be used to stifle dissent. Therefore, where will such information be kept, what will be its conditions, and who will be responsible for any lapse? The law should be made considering these aspects.

Effect of the Court's decision:

There are many reasons to unite the multilingual and multicultural Indians. Common memories of the long struggle against colonialism, the spirit of celebrating elections, the love for cricket and the craziness for Bollywood are some of the traits that are common among all Indians. Nevertheless, it is the constitution and the fundamental rights given by the constitution, which initiate unity in India full of diversities. Indian citizens have been given fundamental



rights for the essential and basic conditions of a good life. These fundamental rights are enshrined in the Indian Constitution. The fundamental rights of the citizens are protected by the supreme law, while the general rights are protected by the common law. In fact, Part 3 of the Constitution contains the provisions of Fundamental Rights, which Dr. Ambedkar, the architect of the Indian Constitution, has called the soul of the Constitution. It is noteworthy that Article 21 has the right to life and liberty and the judiciary has expanded its scope through several decisions in the past and has added education, health, speedy justice, better environment etc. to it. Obviously, the right to privacy is the next stage of this expansion. Under Article 141 of the Constitution, the decision of the Supreme Court is considered the law of the land. When privacy has also become a part of the fundamental right, then any person can demand justice by filing a petition directly in the Supreme Court and High Court in case of violation of his privacy.

Apart from making privacy a fundamental right, a 9-judge bench of the Supreme Court has said another important thing. In fact, 40 years ago in the ADM Jabalpur case, the apex court had said that the right to life and liberty of citizens cannot be guaranteed during emergency. Be aware that this case is also called Habeas Corpus case. In the year 1976, out of five judges of the Supreme Court, only Justice H. R. Khanna advocated safeguarding the right to life and liberty during the Emergency, in a dissenting opinion from the then Chief Justice of India A.N. Khare, Justice MH Baig, Justice Y.V. Chandrachud and Justice P.N. Bhagwati. The government responded to this protest of HR Khanna in its own way and Justice MH Baig was made the Supreme Court Chief Justice in his place, despite being senior. After this he resigned from his post. However, Justice D.Y. Chandrachud, who incidentally is the son of the judge who delivered the judgment in 1976, Justice Y.V. Chandrachud, categorically overruled the 1976 judgment and washed away the stain on the Court for a long time. The decision given in the ADM Jabalpur case was termed as faulty by this bench and said that human existence is impossible without life and personal liberty.

Conclusion:

Privacy, in the view of the court, is a compound made up of elements such as one's dietary habits, freedom to choose one's partner, the question of homosexuality, and the decision to have children. The government's new surrogacy bill prohibits same-sex couples from having a child through surrogacy, while the decision recognizes sexual intercourse and choice as a fundamental right. In such a situation, many people can knock on the door of the court regarding such cases. Obviously, in the coming decade, this decision will serve as the foundation stone for many other important decisions. The court has made it clear that in the name of the welfare of someone, his rights cannot be taken away from him. The public can criticize the government, protest against it, can take to the streets for the violation of their human rights. The nine-judge constitution bench of the court has stated these things very clearly. This decision of the right to privacy makes a citizen aware of all his rights.

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